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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/765,837	09/07/1999	RUTH LAUB	VANMA48.001A	6647

7590 11/25/2003

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EXAMINER

NOLAN, PATRICK J

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 11/25/2003

26

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/765,837

Applicant(s)

LAUB ET AL.

Examiner

Patrick J. Nolan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-36, 39 and 44-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31 is/are allowed.
- 6) ☒ Claim(s) 32-36, 39 and 44-49 is/are rejected.
- 7) ☒ Claim(s) 50-54 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

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DETAILED ACTION

1. This application is a national stage filing under U.S.C. 371 from PCT/BE95/00063, filed 7/14/95.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8-25-2003 has been entered.
3. Claims 31-34, 36, 39 and 44-54 are pending.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

"The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the Applicant regards as his invention."

4. Claims 32, 33, 34, 36, 39 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.
Claims 32, 33, 36 and 39 are vague and indefinite because they lack antecedent basis. In claims 32, 33 and 39 there is no antecedent basis for "the antigenic polypeptide of claim 31", there is support for "The antigenic fragment". In claim 36 there is no antecedent basis for "the polypeptide of claim 31".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

"A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States."

5. Claims 45-49 rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,965,199, of record.

The newly presented claims read upon the disclosed Capon fragment, residues 1799-1860, and its use in a pharmaceutical composition or as a complex with BSA, because the claimed invention comprises at least 7 amino acid sequences of the recited amino acid fragments as long as the resulting polypeptide fragment is antigenic. The Capon fragment generated antibodies, so its' antigenic.

The prior art teachings anticipate the claimed invention

6. Claim 31 in its present state is allowable and claims 50-54 are objected to as being dependent upon a rejected claim.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Nolan whose telephone number is (703) 305-1987. The examiner can normally be reached on Monday through Friday from 8:30 am to 4:30 pm.

8. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Christina Chan, can be reached at (703) 305-3973. Any inquiry of a general nature relating to the status of this application or proceeding should be directed to the Group receptionist, whose telephone number is (703) 308-0196.



Patrick J. Nolan, Ph.D.
Primary Examiner, Group 1640
November 23, 2003